UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

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) Civil Action: 04-30126-MAP
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DEFENDANT COMPLIENT CORPORATION'S REPLY IN SUPPORT OF MOTION TO STRIKE AMENDED COMPLAINT (LEAVE TO FILE GRANTED ON SEPTEMBER 15, 2006)

On August 16, 2006, Defendant, Complient Corporation ("Complient"), filed its Motion to Strike the Amended Complaint filed by Plaintiff, Donald C. Hutchins on August 23, 2006. In his Memorandum in Opposition to the Motion to Strike, Hutchins incorrectly implied that he had asked for and been granted leave to file his Amended Complaint. Although this Court granted Hutchins leave to file an amended complaint in December 2004, that grant of leave is not perpetual and does not give Hutchins free reign to amend his complaint as he sees fit, whenever he pleases. Leave had not been granted to Hutchins to amend his complaint again, at this late stage in the litigation. Moreover, justice requires that such leave be denied in any event for the reasons set forth in Complient's Motion to Strike.

Moreover, in his Memorandum in Opposition, Hutchins refers to a motion for sanctions that he filed in the state court action that Complient filed against Hutchins in Ohio. Hutchins filed the motion on August 8, 2006. It was meritless and based on unsupported, fabricated claims raised by Hutchins in an effort to defame Complient and its attorneys and create an appearance of impropriety where none exists. Inexplicably, the court initially granted the motion for sanctions on August 15, before the expiration of Complient's time to respond.

However, the Ohio court has vacated its sanctions order. On August 18, the day its attorneys received notice of the court's order, Complient sensed that Hutchins' motion was granted in error and immediately filed a Motion for Reconsideration. The court quickly granted Complient's Motion for Reconsideration and vacated its order for sanctions on August 23. See Judgment Entry, attached hereto at Exhibit A. It is unclear whether the court's initial order granting the motion for sanctions was the result of a clerical error, an internal miscommunication, or something else, but the court has swiftly and decisively overturned that erroneous decision.² Hence, there is no order of sanctions against Complient or its attorneys in any court, and the "malicious acts" to which Hutchins refers never occurred.

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¹ Essentially, in his motion, Hutchins alleged that Complient's attorneys had held improper <u>ex parte</u> communications with the Ohio court's staff. In fact, no such communications ever took place and were completely imagined by Hutchins.

² In fact, the Ohio court's Judgment Entry granting the motion for sanctions provided no reasoning but, instead, simply and matter of factly stated that the motion was granted. It provided no explanation. Thus, Hutchins' claims that the court had "recognized [Complient's] injudicious acts," etc., were pure speculation, and, in any event, are now irrelevant given that the court has corrected its ruling.

Accordingly, for the foregoing reasons, as well as those set forth in Complient's original Motion to Strike, Hutchins' Amended Complaint should be stricken.

Respectfully submitted,

s/Jeffrey J. Lauderdale

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CERTIFICATE OF SERVICE

I certify that, on September 18, 2006, I electronically filed a copy of the foregoing Defendant Complient Corporation's Reply in Support of Motion to Strike Amended Complaint (Leave to File Granted September 15, 2006) and that parties to the case, registered with the

Court's electronic filing system, will receive electronic notice of such filing. A copy of the

foregoing was also served upon the following via first-class U.S. mail on today's date:

Donald C. Hutchins 1047 Longmeadow Street Longmeadow, Massachusetts 01106 Pro Se

s/Jeffrey J. Lauderdale

One of the Attorneys for Defendant, Complient Corporation

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